

CHARLES MILLER, PH.D.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GOFORIT ENTERTAINMENT, LLC,)
Plaintiffs,)
)
v.)
)
DIGIMEDIA.COM L.P.,) Case No. 3:08-cv-02011-D
CYBERFUSION.COM L.P.,)
HAPPYDAYS, INC.,)
DIGIMEDIA.COM MANAGEMENT INC.,)
and)
SCOTT DAY,)
Defendants.)

ORAL AND VIDEOTAPED DEPOSITION OF
CHARLES MILLER, Ph.D.
OCTOBER 13, 2009
VOLUME I

ORAL AND VIDEOTAPED DEPOSITION OF CHARLES MILLER,
Ph.D., produced as a witness at the instance of the
Defendants, and duly sworn, was taken in the
above-styled and numbered cause on the 13th day of
October, 2009, from 10:03 a.m. to 12:53 p.m., before
April R. Eichelberger, CSR in and for the State of
Texas, reported by machine shorthand, at the law offices
of Shore Chan Bragalone, LLP, 901 Main Street,
Suite 3300, Dallas, Texas, pursuant to the Federal Rules
of Civil Procedure and the provisions stated on the
record or attached hereto.

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1 A P P E A R A N C E S
2

3 FOR THE PLAINTIFFS:

4 Mr. Corey D. McGaha
5 PATTON ROBERTS PLLC
6 400 Century Plaza
7 2900 St. Michael Drive
8 Texarkana, Texas 75503
9 (903) 334-7000
10 (903) 334-7007 (Fax)

11 Mr. Marshall C. Wood
12 NORTON & WOOD, L.L.P.
13 315 Main Street
14 Texarkana, Texas 75501-5604
15 (903) 823-1321
16 (903) 823-1325 (Fax)

17 FOR THE DEFENDANTS:

18 Mr. Mack J. Morgan III
19 Mr. Drew T. Palmer
20 CROWE & DUNLEVY P.C.
21 20 North Broadway, Suite 1800
22 Oklahoma City, Oklahoma 73102-8273
23 (405) 235-7700
24 (405) 239-6651 (Fax)

25 ALSO PRESENT:

Chris Birge, Videographer

CHARLES MILLER, PH.D.

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1 EXHIBIT LIST

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5 1	6 Handwritten notes by the witness	7 18
8 2	9 Handwritten notes by the witness	10 19
11 3	12 Expert Report by Charles Miller, PhD 13 August 3, 2009	14 43
15 4	16 ISE Invoice to Patton Roberts 9/30/2009	17 102
18 5	19 ISE Invoice to Patton Roberts 7/31/2009	20 102
21 6	22 ISE Invoice to Patton Roberts 8/31/2009	23 102

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: This deposition is
3 being taken in Case Number 3:08-cv-02011-D, filed in the
4 United States District Court for the Northern District
5 of Texas Dallas Division in the case of GoForIt
6 Entertainment, LLC versus Digimedia.com LP,
7 Cyberfusion.com LP, HappyDays, Inc., Digimedia.com
8 Management, Inc., and Scott Day.

9 My name is Chris Birge, the videographer.
10 The court reporter is April Eichelberger of HG
11 Litigation Services, Dallas, Texas.

12 We're here to take the deposition of
13 Charles Miller. Today's date is October 13, 2009. The
14 deposition is being taken at 901 Main Street, Dallas,
15 Texas. We're on the record at 10:03 a.m.

16 Will counsel please state their
17 appearances for the record.

18 MR. MORGAN: My name is Mack Morgan. I'm
19 with Crowe & Dunlevy. I represent the defendants.

20 MR. PALMER: My name is Drew Palmer, also
21 Crowe & Dunlevy, representing the defendants.

22 MR. McGAHA: Corey McGaha from Patton
23 Roberts. I represent the plaintiffs.

24 MR. WOOD: Marshall Wood of Norton &
25 Wood, also representing the plaintiffs.

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1 THE VIDEOGRAPHER: At this time, will the
2 court reporter please swear in the witness.

3 CHARLES MILLER, Ph.D.,
4 having been first duly sworn, testified as follows:

5 EXAMINATION

6 BY MR. MORGAN:

7 Q. Would you state your full name, please.

8 A. Charles Alfred Miller.

9 Q. Dr. Miller, my name is Mack Morgan. I'm one
10 of the attorneys representing the defendants in this
11 case. And today I'm going to be asking you some
12 questions to find out information that you have that's
13 relevant to the case as a result of an expert report
14 that you've tendered.

15 Let me first ask you, sir, have you ever
16 given a deposition before?

17 A. No.

18 Q. Okay. We have a court reporter here who is
19 going to make a written transcript of the questions that
20 I ask and the answers that you give, and under certain
21 circumstances, that testimony may be introduced in
22 court, just as if you were testifying in court.

23 We also have a videographer here who is
24 going to make a video of the deposition, and under
25 certain circumstances, some or all of the video

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1 do not appear in any of the domains registered to the
2 defendants. Do you agree or disagree with that?

3 A. According to the exhibits that were as part of
4 the complaint, it listed the domain names, yes.

5 Q. Yes, you agree?

6 A. Yes, they didn't register GoForIt.

7 Q. Okay. They also say, however, that there are
8 examples in which GoForIt is included in a registered
9 domain name that's owned by someone other than the
10 defendants. Do you know whether that's true or not?

11 A. I do not.

12 Q. Okay. They also say that they've identified
13 many examples in which GoForIt is a subdomain of another
14 website. Do you know whether that's true?

15 A. No.

16 Q. They also say that the use of wildcard DNS is
17 a common allowable practice. Do you agree or disagree
18 with that?

19 A. I can't state how common it is, but it is
20 allowed.

21 MR. MORGAN: Okay. That's all the
22 questions I've got at this time.

23 MR. McGAHA: We have no questions at this
24 time. We'll reserve our questions.

25 MR. MORGAN: Thank you, Dr. Miller.

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HGLITIGATION.COM

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10 DIGIMEDIA.COM MANAGEMENT INC.,)
11 and)
12 SCOTT DAY,)
13 Defendants.)

14 REPORTER'S CERTIFICATION
15 DEPOSITION OF CHARLES MILLER, Ph.D.
16 OCTOBER 13, 2009

17 I, April Eichelberger, Certified Shorthand Reporter
18 in and for the State of Texas, hereby certify to the
19 following:

20 That the witness, CHARLES MILLER, Ph.D., was duly
21 sworn by the officer and that the transcript of the oral
22 deposition is a true record of the testimony given by
23 the witness;

24 That the deposition transcript was submitted on
25 _____ to the witness or to the attorney
for the witness for examination, signature and return to
me by _____;

That the amount of time used by each party at the
deposition is as follows:

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1 MR. MORGAN.....2 hours, 8 minutes

2 MR. McGAHA.....0 minutes;

3 That pursuant to information given to the deposition
4 officer at the time said testimony was taken, the
5 following includes counsel for all parties of record:

6 FOR THE PLAINTIFFS:

7 Mr. Corey D. McGaha, Mr. Marshall C. Wood

8 FOR THE DEFENDANTS:

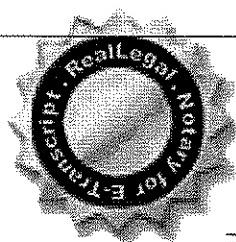
9 Mr. Mack J. Morgan III, Mr. Drew T. Palmer

10 That \$ _____ is the deposition officer's charges
11 to the Defendants for preparing the original deposition
12 transcript and any copies of exhibits;

13 I further certify that I am neither counsel for,
14 related to, nor employed by any of the parties or
15 attorneys in the action in which this proceeding was
16 taken, and further that I am not financially or
17 otherwise interested in the outcome of the action.

18 Certified to by me this _____ day of

19 _____, 2009.



22 April Eichelberger
23 Texas CSR No. 7495
24 Expiration Date: December 31, 2009
25 HG Litigation, Firm No. 69
2501 Oak Lawn Avenue, Suite 600
Dallas, Texas 75219
(214) 521-1188